

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Cinergy Services, Inc.

Docket No. ER01-2984-000

ORDER ACCEPTING AND SUSPENDING INTERCONNECTION AGREEMENT AND
FACILITY CONSTRUCTION AGREEMENT AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued October 26, 2001)

On August 31, 2001, Cinergy Services, Inc., the service company of PSI Energy, Inc., (Cinergy) submitted for filing a proposed unexecuted Interconnection Agreement (IA) and an unexecuted Facility Construction Agreement (FCA) with Duke Energy Vigo LLC (Duke Vigo). In this order, the Commission accepts the IA and FCA for filing, nominally suspends them, to become effective October 31, 2001, subject to refund, sets them for hearing, establishes settlement judge procedures, and, at the request of the parties, holds the hearing and settlement judge procedures in abeyance pending the parties' attempt to finalize negotiations. Our actions will foster a new power generating plant coming on-line.

Background

According to Cinergy, the IA provides for the terms and conditions governing the interconnection of Duke Vigo's proposed 640 MW generation facility (Facility), to be located in Vigo County, Indiana, with Cinergy's transmission system.¹ Duke Vigo will develop, own and operate the Facility which is expected to be operational by May 2003. The FCA provides for the construction and installation of the interconnection facilities and for additions, modifications and other upgrades to existing Cinergy transmission facilities.² Duke Vigo will reimburse Cinergy for all actual costs incurred

¹Duke Vigo plans to simultaneously interconnect the Facility to the transmission system of American Electric Power Service Corp. (AEP) (Dual Interconnection).

²The transmission facilities are currently being operated by PSI Energy, Inc. (PSI), a Cinergy utility operating company.

in the construction, operation and maintenance of the facilities and upgrades.

Cinergy requests that the unexecuted agreements be accepted for filing, suspended and assigned for settlement. Also, Cinergy requests that the settlement procedures be held in abeyance to allow Cinergy and Duke Vigo to finalize negotiations.

Notice of Filing, Interventions and Protests

Notice of Cinergy's filing was published in the Federal Register, 66 Fed. Reg. 47,473 (2001), with protests and interventions due on or before September 21, 2001. On September 21, 2001, Duke Vigo filed a timely motion to intervene and comments and a motion to consolidate. Duke Vigo concurs with Cinergy's request to establish settlement procedures and hold these procedures in abeyance to allow the parties to finalize negotiations. On October 9, 2001, Duke Vigo filed a request to hold the motion to consolidate in abeyance. On October 19, 2001, Sugar Creek Energy, LLC (Sugar Creek) filed an untimely motion to intervene.

Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³ Duke Vigo's timely unopposed motion to intervene serves to make it a party to the proceeding.

We will grant Sugar Creek's unopposed, untimely motion to intervene, given the early stage of the proceeding, the movant's interest in the proceeding, and the absence of any undue prejudice or delay.

B. Proposed IA and FCA

Our review of the IA and the FCA indicates that it has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. In addition, as both Duke Vigo and Cinergy point out, Duke Vigo and Cinergy have not yet resolved all issues regarding the IA and the FCA. Accordingly, we will accept the proposed IA and FCA for filing, suspend them for a nominal period to become effective October 31, 2001, subject to refund, set them for hearing, and establish settlement judge procedures.

Moreover, at the request of the parties, the Commission will allow the parties time to conclude their ongoing discussions and will hold the hearing and the requested settlement judge procedures

³ 18 C.F.R. § 385.214 (2001).

ordered in this case in abeyance, and direct the Chief Administrative Law Judge to defer appointment of a presiding judge or settlement judge pending the parties' efforts to resolve this issue. The parties shall report to the Chief Judge within 60 days of the date of issuance of this order concerning the status of their negotiations. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts, or provide for commencement of the formal hearing process by assigning the case to a presiding judge or provide for settlement judge procedures by assigning the case to a settlement judge, as appropriate.

While we are setting this proceeding for hearing and settlement judge procedures, there is one further matter we wish to address: interest on the monies paid by Duke Vgo for network upgrades that Duke Vgo ultimately will receive back through transmission credits. Traditionally, we have not required that the credits include interest on the monies paid; the credits reflect only the principal. This is a matter we intend to explore as part of a generic proceeding on interconnection pricing that we intend to initiate in the near future. In the interim, though, until that proceeding reaches a final conclusion, we find that the transmission credits should include interest on the monies paid.⁴

The Commission orders:

(A) Sugar Creek's untimely motion to intervene is hereby granted.

(B) Cinergy's proposed unexecuted Interconnection Agreement and Facilities Construction Agreement are hereby accepted for filing, suspended for a nominal period, to become effective on October 31, 2001, subject to refund, as discussed in the body of this order.

(C) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Cinergy's proposed unexecuted Interconnection Agreement and Facility Construction Agreement. We will, however, hold the hearing in abeyance to give the parties time to continue their informal negotiations.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2001), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the

⁴ See American Electric Power Service Corporation, 97 FERC ¶ ____ at ____, slip op. at 3-4 (2001) (being issued concurrently).

settlement judge. As discussed in the body of this order, we will hold the settlement judge procedures in abeyance to give the parties time to conclude their informal negotiations.

(E) Within 60 days of the date of this order, the parties shall file a report with the Chief Judge on the status of their informal negotiations. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts or order commencement of settlement judge procedures or, if appropriate, the formal hearing process by assigning the case to a settlement judge or, if appropriate, a presiding judge. If informal negotiation efforts continue, the parties shall file report at least every 30 days thereafter, informing the Chief Judge of the parties' progress toward settlement.

(F) If the informal negotiations and any settlement judge procedures fail, and a formal hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Breathitt dissented in part with
a separate statement attached.

(S E A L)

David P. Boergers,
Secretary.

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Cinergy Services, Inc.

Docket No. ER01-2984-000

Breathitt, Commissioner, dissenting in part:

(Issued October 26, 2001)

In an order issued on October 25, 2001, in American Electric Power Service Corporation, Docket No. ER01-2163-001, I issued a dissent on the Commission's new policy to require interest on transmission credits. For the reasons I articulated in AEP, I dissent on this aspect of today's order.

Linda K. Breathitt
Commissioner